STATE BOARD OF EQUALIZATION

May 7, 1957

Dear _____,

Honorable Robert E. McDavid, Chairman of this Board, has requested me to review the file and write you concerning your contention that you should receive a credit against our sales tax determination levied against you under date of June 19, 1956, in the amount of the use tax paid by you with respect to the vehicles upon bringing them into this State.

It appears from our records that, with respect to all of the eleven vehicles in question, they were used by you for a purpose other than demonstration or display after you brought them into this State and prior to their sale by you. If this is the fact, we can find no legal basis to consider the use tax inapplicable. You strongly rely upon Section 6401 of the Revenue and Taxation Code contending that it should exempt from the use tax your use of the vehicles in this State subsequently sold by you. We do not believe that you have correctly interpreted this section nor has its correct interpretation been adequately explained to you in prior correspondence.

The section provides that "The storage, use, or other consumption in this State of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax." This is the section that prevents the use tax from applying to the use of property purchased from a retailer whose gross receipts are subject to the sales tax. To interpret it as applying in such a manner as to exempt from the use tax the use in this State of property which is eventually sold at retail by the user would constitute a limitation upon t he application of the use tax not contemplated by the various provisions of the statute imposing the tax upon the use of property purchased for use in this State. The best illustration of this is Section 6244, providing that if a purchaser who buys property for resale by giving a resale certificate "makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used". Clearly the words, any "storage or use" would include storage or use prior to a subsequent sale of the property. An even more compelling reason is that in defining "storage" and "use", Sections 6008 and 6009 make no exclusion of the storage or use of property subsequently sold by the person storing or using it. Section 6009.1 does make an exclusion with respect to property subsequently used solely outside t he State. The absence of any exclusion of property subsequently to be sold seems a clear showing of intent that no such exclusion is intended by the law.

The use tax, as you know, is complementary as to the sales tax. See Chicago Bridge and Iron Company v. Johnson, 19 Cal.2d 162. Your interpretation of Section 6401 is inconsistent with the following statement of the California Supreme Court in the case just cited:

> "In approaching this problem it is first necessary to consider the purpose and object of the use tax. It cannot be doubted that the purpose sought to be

> accomplished by a statute relating to taxation is important in construing such statute and in determining the scope of its application (citation). One of these purposes is to make the coverage of the tax complete to the end that the retail sales tax will not result in an unfair burden being placed upon the local retailer engaged solely in intrastate commerce as compared with the case where the property is purchased for use or storage in California and is used or stored in this state. The two taxes are complemental to each other with the aim of placing the local retailers and their out-of-state competitors on an equal footing."

Had you purchased the vehicles from a California dealer, the sales tax would have applied regardless of your subsequent sale of the vehicles after you have used them for other than demonstration or display. This clearly follows from t he definition of retail sale in Section 6007 as a sale "for any purpose" other than resale. Thus, to conclude that you are not liable for use tax because you subsequently sold the vehicles would certainly conflict with the above-quoted portion of our Supreme Court's opinion in the Chicago Bridge and Iron Company case. It is fundamental that provisions of a statute are to be harmonized and will be interpreted to avoid inconsistency and to carry out the purpose of the statute. Thus, in our opinion, Section 6401 is properly interpreted, as we have indicated it should be namely, to exempt from the use tax the use of property when the sale to the user is subject to the sales tax, and as not exempting a prior use of the property by the seller.

This has been our consistent interpretation of the application of the use tax ever since its enactment. Contrary to the statement in your letter of October 22, 1956, your case is not being handled different than others of a similar nature. We regret that our Santa Monica office apparently gave you erroneous information concerning the application of the use tax or was under a misapprehension as to the circumstance.

Apparently there is no dispute that you did in fact use the vehicles in this State for other than demonstration or display prior to the time you sold them. A report of Mr. W. E. Williams, hearing officer, who discussed the matter with you on August 22, 1956, states:

> "The cars were brought into California on Iowa plates. Some were brought on $5 one-way trip permits issued by Iowa, and were first registered here in California. In bringing in other cars he said he first secured California plates and then flew to Iowa with them, affixing them to the new cars there."

As Mr. McDavid told you in his letter of March 14, your petition for redetermination will be scheduled for hearing before the Board in Los Angeles during the month of June. We shall look forward to meeting you at that time.

Very truly yours,

E. H. Stetson
Tax Counsel